

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:	Bky. No.: 22-41522
Richard Marshall,	Chapter 13
Debtor.	

**NOTICE OF HEARING AND
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

To: The debtor, Richard Marshall, by and through his counsel of record Jeffrey H. Butwinick, Esq., 7800 Metro Parkway, Suite 300, Bloomington, MN 55425.

1. Healthy Spaces 16, LLC, a Minnesota limited liability company, by its undersigned attorneys, Trott Law, P.C., will make a motion for the relief requested below and hereby gives notice of hearing.

2. The court will hold a hearing on this motion on Wednesday, October 26, 2022 at 1:30 P.M., Courtroom No. 8 West, at the United States Courthouse, at 300 South Fourth Street, Minneapolis, Minnesota, or as soon thereafter as counsel may be heard, before The Honorable Katherine A. Constantine, United States Bankruptcy Judge.

3. Any response to this motion must be filed and served by delivery or by mail not later than Friday October 21, 2022 which is five days before the time set for the hearing (including Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005, and Local Rule 1070-1. This proceeding is a core proceeding.

5. The petition commencing this chapter 13 case was filed on September 14, 2022. The case is now pending in this court.

6. This motion arises under 11 U.S.C. § 362(d) and Fed. R. Bankr. P. 4001. This motion is filed pursuant to Fed. R. Bankr. P. 9014, and Local Rules 9013-1 through 9013-3.

7. The movant requests relief from the automatic stay of 11 U.S.C. § 362 with respect to certain real property described in the Declaration filed herewith (“Property”), that is owned by movant as demonstrated and subject to a terminated lease.

8. The movant requests that the 14-day stay notwithstanding Fed. R. Bankr. P. 4001(a)(3).

9. Pursuant to the provisions of 11 U.S.C. § 362(d), the movant alleges that it is entitled to relief from the automatic stay inasmuch as:

- a. The Property is subject to a month-to-month lease dated April 30, 2015 on which the Debtor is the lessor and Healthy Spaces 16, LLC is the lessee (the “Lease”).
- b. On or about June 27, 2022, the Debtor was served a notice stating that the Lease would not be renewed and would terminate on August 31, 2022.
- c. To date, the Debtor has not vacated the Property.
- d. Healthy Spaces 16, LLC was on the cusp of filing an eviction action to retake possession of the Property when the Debtor filed this bankruptcy case.
- e. The Debtor has made no provision in the plan for the Lease.

10. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. § 362(a) to allow the movant to pursue its remedies under state law.

WHEREFORE, Healthy Spaces 16, LLC, by its undersigned attorneys, requests that this court grant an order pursuant to 11 U.S.C. § 362(d), terminating the automatic stay with respect to the property so that the movant may pursue its rights under applicable state law or, in the alternative, for such other and further relief as may be just and equitable.

Respectfully submitted,

Trott Law, P.C.

Dated: October 11, 2022

By: /e/ Samuel R. Coleman
Samuel R. Coleman (#0389839)
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Fax: (651) 292-9482

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Richard Marshall,

Debtor.

Bky. No.: 22-41522

Chapter 13

**DECLARATION IN SUPPORT OF
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

I, Brian P. Sammon, declare under penalty of perjury as follows:

1. I am a Brian P. Sammon at Healthy Spaces 16, LLC a Minnesota limited liability company, and am authorized to sign this declaration on behalf of Healthy Spaces 16, LLC. This declaration is provided in support of the motion for relief from stay filed herewith.

2. As part of my responsibilities for Healthy Spaces 16, LLC, I have personal knowledge of and am familiar with the types of records maintained by Healthy Spaces 16, LLC in connection with leases, rental payments, and other documents relating to the rental properties owned by Healthy Spaces 16, LLC. I have access to and have reviewed the books, records, and files of Healthy Spaces 16, LLC that pertain to the subject real property at issue in this motion.

3. The information in this declaration is taken from Healthy Spaces 16, LLC's business records regarding the debtor and the subject real property. The business records are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal

knowledge; and (b) kept in the course of Healthy Spaces 16, LLC's regularly conducted business activities. It is the regular practice of Healthy Spaces 16, LLC to create and maintain such records.

4. The Debtor Richard Marshall is the occupant at the real property located at 7600 Cedar Avenue South, Apt. 20, Richfield, MN 55423 (the "Property").

5. The Property is owned by Healthy Spaces 16, LLC.

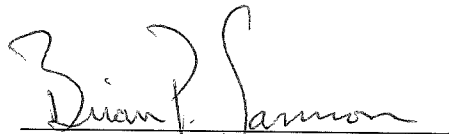
6. The Property was subject to a month-to-month lease dated April 30, 2015 on which the Debtor is the lessor and Healthy Spaces 16, LLC is the lessee (the "Lease").

7. On or about June 27, 2022, Healthy Spaces 16, LLC, through its property management company, Patche & Sammon Realty, LLC, served a notice on the Debtor stating that the Lease would not be renewed and would terminate on August 31, 2022.

8. The Debtor has not vacated the Property.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 10th day of October, 2022

A handwritten signature in black ink, appearing to read "Brian P. Sammon", written over a horizontal line.

Name: Brian P. Sammon

**UNITED STATES BANKRUPTCY COURT
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Chapter 13

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

ARGUMENT

Section 362(d)(1) of the Bankruptcy Code, 11 U.S.C. §362 (d)(1), specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay:

On request of a part in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such a part in interest; or.....

Section 362(d)(1) permits relief from stay for “cause”. *See* 11 U.S.C. § 362(d)(1).

“Cause” as used in § 362(d)(1) has no clear and limited definition and, therefore, is determined on a case by case basis... “Cause” is an intentionally broad and flexible concept that permits the Bankruptcy Court, as a court of equity, to respond to inherently fact-sensitive situations.

In re Texas State Optical, Inc., 188 B.R. 552, 556 (Bankr. E.D. Tex. 1995)(citations omitted).

The standard for “cause” under § 362(d)(1) is broad, and may extend beyond the one enumerated ground of lack of “adequate protection” as defined by 11 U.S.C. § 361. *In re Lilyerd*, 49 B.R. 109, 116 (Bankr. D. Minn. 1985). “Cause has been defined to mean “any reason whereby a creditor is receiving less than his bargain from a debtor and is without remedy because of the

bankruptcy proceeding.” *In re Martens*, 331 B.R. 395, 398 (8th Cir. B.A.P. 2005)(citations omitted).

Here, ample cause exists for terminating the automatic stay to allow the movant to proceed with its eviction action. The Lease was terminated by a notice of non-renewal given with at least 30 days’ notice, as required under the Lease. The debtor continues to occupy the Property unlawfully without providing any adequate protection.

CONCLUSION

Based on the evidence submitted and the controlling law, the movant respectfully requests that the Court terminate the automatic stay and waive the 14-day stay after entry of the order.

Respectfully submitted,

Trott Law P.C.

Dated: October 11, 2022

By: /e/ Samuel R. Coleman
Samuel R. Coleman (#0389839)
The Academy Professional Building
25 North Dale Street
St. Paul, MN 55102
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Chapter 13

UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Candace Lepley, with an office address of The Academy Professional Building, 25 North Dale Street, St. Paul, MN 55102-2227 declare that on October 11, 2022, I caused the following documents:

**Notice of Hearing and Motion,
Memorandum,
Declaration,
Proposed Order,
And Corporate Disclosure Statement**

to be filed electronically with the Clerk of the Bankruptcy Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

Gregory A Burrell, Trustee

U.S. Trustee ustpreion12.mn.ecf@usdoj.gov, ecfbkup@comcast.net

Jeffrey H. Butwinick Jeff@butwinicklaw.com

I further declare that I caused a copy of the foregoing documents to be mailed to the following non-ECF participants by enclosing in an envelope and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota:

Richard Marshall
7600 Cedar Ave S
Apt 20
Minneapolis, MN 55423-4401

I declare, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted,

Trott Law P.C.

Dated: October 11, 2022

By: /e/ Candace Lepley
Candace Lepley
The Academy Professional Building
25 Dale Street North
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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Richard Marshall,

Debtor.

Bky. No.: 22-41522

Chapter 13

ORDER GRANTING RELIEF FROM STAY

This case is before the court on the motion of Healthy Spaces 16, LLC for relief from the automatic stay imposed by 11 U.S.C. § 362(a).

Based on the record, the court finds that grounds exist under 11 U.S.C. § 362(d) to warrant relief.

IT IS ORDERED:

1. The motion for relief from stay is granted as follows.
2. The automatic stay imposed by 11 U.S.C. § 362(a) is terminated such that the movant may exercise its rights and remedies under applicable nonbankruptcy law with respect to the apartment located at 7600 Cedar Avenue South, Apt. 20, Richfield, MN 55423.
3. Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this order is effective immediately.

DATED:

Katherine A. Constantine
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Richard Marshall,

Debtor.

Bky. No.: 22-41522

Chapter 13

CORPORATE DISCLOSURE STATEMENT

TO: Clerk of Court, United States Bankruptcy Court, and all counsel of record:

No entity owns more than 10% of Healthy Spaces 16, LLC, a Minnesota limited liability company.

TROTT LAW, P.C.

Dated: October 11, 2022

By: /s/ Samuel R. Coleman
Samuel R. Coleman (#389839)
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